

SUPREME COURT OF WISCONSIN

In the Matter of the Amendment of ss.
17.15(2), 17.16(1), 17.27(2), 23.77 (1)
and (3)(a) and (b), 51.20 (11)(a),
59.40(2)(d), 80.24(6), 80.48(2) and (3),
345.43(1) and (3)(a), (b) and (c),
753.34(6), ch. 756, ss. 788.03, 805.08(2)
and (3), 805.09(1), 805.18(2), 879.45(5),
880.33(2)(a)1., 971.04(1)(c), 971.165(1)(c)2.
and 3., 972.01, 972.02(1), 972.03, 972.04(1),
972.10(7), 975.06(1)(b)(Intro.), 978.05(4)
and 979.05(2) and (3) - Juror Use and
Management

ORDER
No. 96-08

The court held a public hearing September 11, 1996 on the petition of the Judicial Council seeking implementation of the American Bar Association Standards Relating to Juror Use and Management by amendment of the statutes to delete statutory references to jury commissioners and municipal jury lists, to repeal and recreate chapter 756 of the statutes in respect to jury service, the preparation of prospective juror lists, and the selection of juries, and to renumber and revise the provisions for grand jury and inquest jury selection and service. The court has considered the petition, the presentations made at the public hearing and the materials filed with the court in the matter.

The League of Women Voters of Dane County, Inc. appeared at the public hearing and proposed that the

statute, Wis. Stat. § 756.04(1)(b), specifying the contents of the list of names compiled by the Department of Transportation for use in jury selection be amended to require the date on which the motor vehicle operator's license or identification card was issued to each of the names on the list. It further proposed statutory amendments to provide that the department list subsequently used by the clerks of circuit court to compile lists of prospective jurors and to create a master list first be purged of the names of those on the Department of Transportation list whose motor vehicle operator's license or identification card has expired. Because these proposed amendments were not part of the Judicial Council petition that was noticed for public hearing and interested persons, including the Department of Transportation, may not have had the opportunity to present their views on the proposal, the court takes no action on the proposed amendments but will consider them in a separate rule-making proceeding, upon a petition filed by The League of Women Voters of Dane County, Inc. or others, with notice and a public hearing.

IT IS ORDERED that, effective July 1, 1997,

1. Section 17.15(2) of the statutes is repealed.

JUDICIAL COUNCIL NOTE, 1996: This proposal repeals all statutory references to jury commissioners.

2. Section 17.16(1) of the statutes is amended to read:

17.16(1) Removals from office at pleasure shall be made by order, a copy of which shall be filed as provided by sub. (8), except that a copy of the order of removal of a court commissioner, ~~a jury commissioner~~ or family court commissioner shall be filed in the office of the clerk of the circuit court.

JUDICIAL COUNCIL NOTE, 1996: This proposal repeals all statutory references to jury commissioners.

3. Section 17.27(2) of the statutes is repealed.

JUDICIAL COUNCIL NOTE, 1996: This proposal repeals all statutory references to jury commissioners.

4. Section 23.77(1) of the statutes is amended to read:

23.77(1) If in circuit court either party files a written demand for a jury trial within 20 days after the court appearance date and immediately pays the fee prescribed in s. 814.61(4), the court shall place the case on the jury calendar. The number of jurors shall be determined under s. ~~756.096(3)~~ 756.06(2)(b). If no party demands a trial by jury, the right to trial by jury is permanently waived.

5. Section 23.77(3)(a) of the statutes is renumbered 23.77(3).

6. Section 23.77(3)(b) of the statutes is repealed.

JUDICIAL COUNCIL NOTE, 1996: This proposal repeals all statutory references to municipal jury lists.

7. Section 51.20(11)(a) of the statutes is amended to read:

51.20(11)(a) If before involuntary commitment a jury is demanded by the individual against whom a petition has been filed under sub. (1) or by the individual's counsel if the individual does not object, the court shall direct that a jury of 6 people be ~~drawn~~ selected to determine if the allegations specified in sub. (1)(a), (ar) or (av) are true. A jury trial is deemed waived unless demanded at least 48 hours in advance of the time set for final hearing, if notice of that time has been previously provided to the subject individual or his or her counsel. If a jury trial demand is filed within 5 days of detention, the final hearing shall be held within 14 days of detention. If a jury trial demand is filed later than 5 days after detention, the final hearing shall be held within 14 days of the date of demand. If an inmate of a state prison, county jail or house of correction demands a jury trial within 5 days after the probable cause hearing, the final hearing shall be held within 28 days of the probable cause hearing. If an inmate of a state prison, county jail or house of correction demands a jury trial later than 5 days after the probable cause hearing, the final hearing shall be held within 28 days of the date of demand.

JUDICIAL COUNCIL NOTE, 1996: This proposal changes "drawn" to "selected" whenever a statute refers to choosing jurors or prospective jurors, for statutory uniformity. Section 756.01(4) allows any method of random selection to be used, manual or automated.

8. Section 59.40(2)(d) of the statutes is amended to read:

59.40(2)(d) Keep a minute record and, except for actions under ch. 799, write in that record a brief statement of all proceedings in open court showing motions and orders during trial, names of witnesses, jurors ~~drawn~~ selected, the officer sworn to take them in charge, jury verdicts and openings and adjournments of court. The clerk, in lieu of keeping a minute record, may elect to incorporate in the appropriate court record, civil or criminal, the data which this paragraph requires to be recorded.

JUDICIAL COUNCIL NOTE, 1996: This proposal changes "drawn" to "selected" whenever a statute refers to choosing jurors or prospective jurors.

9. Section 80.24(6) of the statutes is amended to read:

80.24(6) If more than one appeal is taken from the award of damages on account of any highway, the appeals shall be consolidated by the circuit judge, and only one jury shall be ~~impaneled~~ selected to reassess the damages.

10. Section 80.48(2) of the statutes is amended to read:

80.48(2) DEPOSIT OF FUNDS; NOTICE OF HEARING. (a) An order made under sub. (1)(c) shall require the petitioners to deposit with the treasurer of the proper municipality such sum as the authorities who made the order consider necessary to pay the costs and expenses of the proceedings to be held pursuant to the order. No further action shall be had on the petition until the deposit is made. When the deposit is made, the common council, trustees or supervisors shall make a further order fixing the time, not less than 10 days thereafter, when and place where a jury will be ~~impaneled~~ selected to pass upon the necessity for taking the land through which the proposed street or highway is to be laid.

(b) Notice of the time and place the jury will be ~~impaneled~~ selected shall be served upon the occupants of the land through which the proposed street or highway is to be laid, if any, as provided in s. 80.05 not less than 6 days before the time so fixed. If any portion of the land through which the proposed street or highway is to be laid is not actually occupied, the notice shall be published as a class 2 notice, under ch. 985, in the city, village or town where the land is located. The notice shall contain a description, as near as may be, of the premises to be taken and state that at the time and place named in the notice a jury will be ~~impaneled~~ selected for the purpose of passing upon the

necessity for taking for the public use the land described therein.

11. Section 80.48(3) of the statutes is amended to read:

80.48(3) JURORS. At the time and place specified in the notice the circuit judge of the county, the president of the village or the chairperson of the town in which the land sought to be taken lies shall issue a precept directed to the sheriff of the county or to any constable, naming the sheriff or constable, which precept shall direct the officer to write the names of 36 freeholders of the county who are qualified to serve as jurors in the circuit court and to return the list. After being sworn to perform the duties required to the best of his or her ability, without partiality, the officer shall immediately write the names and deliver the list thereof to the officer who issued the precept; and from the list each party, in person or by an agent or attorney, commencing with the petitioner, shall strike out alternately, 12 names, and if either party is absent or refuses to strike out, the officer who issued the precept shall appoint some person to strike 12 names for the absent person. The officer shall then summon the 12 persons whose names remain on the list in the manner prescribed under s. ~~756.08~~ 756.05 to appear at the time and place mentioned in the summons for the purpose of determining the

necessity of taking for the public use the land described in the petition; if any of the persons summoned fail to attend, others may be ~~drawn~~ selected in the same mode to fill the vacancy, and for that purpose the proceedings may be adjourned from time to time. When 12 persons are thus secured, they shall be sworn by the officer who issued the precept to faithfully and impartially discharge the duties imposed upon them, which oath shall be filed with the city, village or town clerk. The number of persons listed and summoned shall be proportionately reduced if the jury is to consist of a number less than 12.

12. Section 345.43(1) and (3)(a) and (b) of the statutes are amended to read:

345.43(1) If a case has been transferred under s. 800.04(1)(d), or if in circuit court either party files a written demand for a jury trial within 10 days after the defendant enters a plea of not guilty under s. 345.34 and immediately pays the fee prescribed in s. 814.61(4), the court shall place the case on the jury calendar of the circuit court. The number of jurors shall be ~~determined under s. 756.096(3)(b)~~ 6. If no party demands a trial by jury, the right to trial by jury is permanently waived.

(3)(a) ~~If a jury is demanded, in~~ In counties having a population of 500,000 or more, the jury shall be ~~drawn~~ selected from the circuit court ~~jury panel and selected~~

prospective juror list as set forth under chs. 801 to 847. In all other counties, ~~such~~ juries shall be selected as provided in ~~para.~~ par. (b) ~~and (c)~~, except that ~~any party may demand trial by a countywide jury and that the clerk shall randomly select, by lot,~~ the names of sufficient persons qualified to serve as jurors as will provide to each party entitled to peremptory challenges ~~the number of challenges specified in par. (b)~~ 5 peremptory challenges.

(b) If a timely demand for a jury is made, the judge shall direct the clerk of the court to select ~~by lot~~ at random from the ~~current jury panel~~ prospective juror list the names of a sufficient number of ~~residents of the county qualified to serve as~~ prospective jurors ~~in courts of record,~~ from which ~~lists~~ list either party may strike 5 names. If either party neglects to strike out names, the clerk shall strike out names for the party. The judge shall permit voir dire examinations and challenges for cause. The clerk shall summon a sufficient number of persons whose names are not struck out, to appear at the time and place named in the summons.

13. Section 345.43(3)(c) of the statutes is repealed.

JUDICIAL COUNCIL NOTE, 1996: This statute prescribes procedures for the trial of "traffic regulation" forfeiture offenses. Subsection (1) is amended to conform to the amendment of s. 756.096(3)(b) by 1995 Wis. Act 27, limiting jury size to six in such cases. Subsection (3) is amended by incorporating the usage of revised ch. 756. Prior sub. (3)(c), allowing use of a municipal jury list, is repealed.

14. Section 753.34(6) of the statutes is amended to read:

753.34(6) ~~The jury commissioners of Shawano county shall serve as jury commissioners for the circuit court for Menominee and Shawano counties, and the jury list shall be known as the jury list~~ A single prospective juror list shall be prepared for the circuit court for Menominee and Shawano counties.

15. Chapter 756 (title) of the statutes is amended to read:

CHAPTER 756

JURORS JURIES

16. Sections 756.001 to 756.03 of the statutes are repealed and recreated to read:

756.001 State policy on jury service; opportunity and obligation to serve as juror. (1) Trial by jury is a cherished constitutional right.

(2) Jury service is a civic duty.

(3) No person who is qualified and able to serve as a juror may be excluded from that service in any court of this state on the basis of sex, race, color, sexual orientation as defined in s. 111.32(13m), disability, religion, national origin, marital status, family status, lawful source of income, age or ancestry or because of a physical condition.

(4) All persons selected for jury service shall be selected at random from the population of the area served by the circuit court. All qualified persons shall have an equal opportunity to be considered for jury service in this state and the obligation to serve as jurors when summoned under this chapter for that purpose. Any manual or automated method of selection that provides each qualified person with an equal probability of selection for jury service or that provides each prospective juror with an equal opportunity for assignment to a particular trial may be used.

(5) The presiding judge of each circuit court, or, if there is none, the circuit judge designated by the chief judge to supervise the jury system, shall be responsible for administering the jury system in that court and shall discharge that duty in an efficient, equitable and cost-effective manner, in accordance with this chapter. The clerk of circuit court, if delegated by and under the supervision of the judge responsible for administering the jury system, may select and manage juries under policies and rules established by the judges in that circuit court.

JUDICIAL COUNCIL NOTE, 1996: Subsections (1) and (2) are based on prior s. 756.001(1). Subsection (3) implements ABA Standard 4 by expanding the nondiscrimination clause of prior s. 756.01(3) to all classes protected under the state equal rights statute, s. 101.22. Subsection (4) implements ABA Standard 3 and is based on prior s. 756.001(2). Subsection (5), based on the same prior statute, implements ABA Standard 10.

756.02 Juror qualifications. Every resident of the area served by a circuit court who is at least 18 years of age, a U.S. citizen and able to understand the English language is qualified to serve as a juror in that circuit unless that resident has been convicted of a felony and has not had his or her civil rights restored.

JUDICIAL COUNCIL NOTE, 1996: This section, based on prior s. 756.01(1), implements ABA Standard 4.

756.03 Excuse; deferral. (1) **EXCUSE.** The court to which a person is summoned for jury service may excuse the person from jury service if the court determines that the person cannot fulfill the responsibilities of a juror. The court shall not consider any structural limitations of a facility when making that determination.

(2) **DEFERRAL.** The court to which a person is summoned for jury service may, upon request of that person, defer to a later date set by the court the period in which the person must serve if the court determines that service as a juror would entail undue hardship, extreme inconvenience or serious obstruction or delay in the fair and impartial administration of justice.

(3) **CLERK AUTHORIZED TO GRANT.** The judge responsible for administering the jury system in the circuit court may authorize the clerk of circuit court to grant excuses or deferrals under this section. The authorization may limit

the grounds on which the clerk of circuit court may grant the excuse or deferral and may require persons seeking an excuse or deferral to document the basis for any excuse or deferral.

JUDICIAL COUNCIL NOTE, 1996: This proposal, implementing ABA Standard 6, repeals the concept of exclusions and exemptions under prior s. 756.02. Instead, it allows judicial excuses for persons who clearly cannot fulfill the duties of a juror and deferrals for undue hardship. Periods of required availability for jury service are set forth in s. 756.28.

17. Section 756.031 of the statutes is repealed.

18. Section 756.04 of the statutes is repealed and recreated to read:

756.04 Prospective juror lists; number; how compiled.

(1) In this section:

(a) "Department" means the department of transportation.

(b) "Department list" means a compilation of information prepared by the department that includes the name, address, date of birth, race and gender of each person who is licensed as a motor vehicle operator under ch. 343 or who has received an identification card under s. 343.50 or 343.51.

(c) "Race" means African American, American Indian or Alaskan Native, Asian or Pacific Islander, Caucasian, Hispanic, or other racial category.

(2) Jurors for all circuit courts, except jurors under ch. 80, shall be selected under ss. 756.04 to 756.07.

(3) Annually, on a date established by the secretary of transportation, the department shall transmit, without charge, to each clerk of circuit court a department list of persons residing in the area served by that circuit court. The department shall establish, by rule, uniform specifications regarding the size, format and content of computer tapes or other media used to prepare the department list.

(4) The clerk of circuit court shall compile the list of prospective jurors by selecting names at random from the department list or from a master list created under this subsection and sub. (5).

(5)(a) The clerk of circuit court may create a master list using the department list and any of the following:

1. Voter registration lists.
2. Telephone and municipal directories.
3. Utility company lists.
4. Lists of payers of real property taxes.
5. Lists of high school graduates who are 18 years of age or older.
6. Lists of persons who are receiving aid to families with dependent children under subch. III of ch. 49.

(b) To create a master list, the clerk of circuit court shall select randomly a sample of names from each source used. The same percentage of names shall be selected from each source used. The department list shall be the primary source, and the names selected from the department list shall be compared with the names from the 2nd source. Duplicate names shall be removed from the 2nd source sample and the remaining names shall be combined with the names selected from the department list to create the master list. If more than 2 source lists are used, this process shall be repeated, using the previously compiled master list for comparison with any additional source list.

(6) The clerk of circuit court shall mail to every prospective juror, separately or together with the summons under s. 756.05, a juror qualification form accompanied by instructions requiring the person to complete and return the form to the clerk within 10 days after receiving it. The form shall request all of the following:

(a) Information necessary to determine if the person is qualified to serve as a juror in that circuit court.

(b) The race of the prospective juror.

(c) The prospective juror's declaration that the responses are true to the best of his or her knowledge.

(7) The form under sub. (6) may request other information that the court needs to manage the jury system

in an efficient manner, including information ordinarily sought during voir dire examination. The form under sub. (6) shall include a notice that, if the person wilfully misrepresents a material fact or fails to return the completed form within 10 days after its receipt, the person may be required to forfeit not more than \$500.

(8) If a prospective juror is unable to fill out the form under sub. (6), another person may complete the form and shall indicate why the person has done so. If it appears that there is an omission, ambiguity or error in a returned form, the clerk of circuit court shall return the form to the person with instructions to correct and return the form to the clerk within 10 days after receiving the form.

(9) During each year, the clerk of circuit court shall provide the court with a sufficient number of names of prospective jurors to meet the needs of the court. The clerk shall randomly select names from the department list or master list and strike the name of any person randomly selected whose returned juror qualification form shows that the person is not qualified for jury service under s.

756.02. The clerk shall certify that the names were selected in strict conformity with this chapter. The clerk shall include a verified statement with the list of names describing the manner in which the names were selected, including an identification of all sources used in the

preparation of the list. The clerk shall keep a certified copy of the names of prospective jurors, including the address of each prospective juror, for public inspection.

(10) The clerk of circuit court shall keep computerized juror lists secure against unauthorized access.

JUDICIAL COUNCIL NOTE, 1996: This section, based on prior s. 756.04, implements ABA Standard 2, recommending regularly maintained source lists as inclusive as feasible of the adult population of the district.

19. Section 756.041 of the statutes is repealed.

20. Sections 756.05 to 756.08 of the statutes are repealed and recreated to read:

756.05 Jury summons, when and how issued. At least 12 days before the first day on which a jury is required to be present, the clerk of circuit court shall summon sufficient prospective jurors to appear before the court at an appropriate time for jury service. The summons may be served by 1st class mail or another method.

JUDICIAL COUNCIL NOTE, 1996: Based on prior s. 756.08, this provision implements ABA Standard 11. Under s. 756.04(6), the qualification questionnaire sent to prospective jurors may be sent at the same time as the summons.

756.06 Jury selection. (1) Whenever an issue is to be tried before a jury, the clerk of circuit court shall randomly select names from the prospective juror list until the desired number is obtained.

(2)(a) A jury in a felony case shall consist of 12 persons unless both parties agree on a lesser number as provided in s. 972.02.

(am) A jury in a misdemeanor case shall consist of 6 persons.

(b) Except as provided in par. (c), a jury in a civil case shall consist of 6 persons unless a party requests a greater number, not to exceed 12. The court, on its own motion, may require a greater number, not to exceed 12.

(c) A jury in a case involving an offense for which a forfeiture may be imposed or in an inquest under s. 979.05 shall consist of 6 persons.

(d) This subsection does not apply to cases under ch. 938.

JUDICIAL COUNCIL NOTE, 1996: Based on prior s. 756.096, this section implements ABA Standard 17.

756.07 Insufficient jurors. When a sufficient number of jurors cannot be obtained for a trial from the list supplied by the clerk of circuit court, the court may order the sheriff to bring before the court persons in the vicinity for determination by the court of their qualification and ability to serve as jurors for the particular trial.

JUDICIAL COUNCIL NOTE, 1996: Based on prior s. 756.06, this allows jurors to be chosen from those in the vicinity, whether or not "bystanders," for a particular trial.

756.08 Oaths and affirmations. (1) The jurors selected to try the issues in the action or proceeding shall take an oath or affirmation to try the issues submitted to them and, unless discharged by the court, to give a verdict according to the law and the evidence given in court.

(2) When the issues have been submitted to the jury, a proper officer, subject to the direction of the court, shall swear or affirm that the officer will keep all jurors together in some private and convenient place until they have agreed on and rendered their verdict, are permitted to separate or are discharged by the court. While the jurors are under the supervision of the officer, he or she may not permit them to communicate with any person regarding their deliberations or the verdict that they have agreed upon, except as authorized by the court.

JUDICIAL COUNCIL NOTE, 1996: This section is based on prior s. 756.098. The ABA Standards do not mention oaths or affirmations.

21. Sections 756.095 to 756.098 of the statutes are repealed.

22. Section 756.10 (title) of the statutes is renumbered 968.40 (title).

23. Section 756.10(1) of the statutes is renumbered 968.40(1) and amended to read:

968.40 (1) SELECTION OF GRAND JURY LIST. Any judge may, in writing, order the ~~jury commissioner~~ clerk of circuit court

to select a grand jury list within a specified reasonable time. The ~~commissioner~~ clerk shall select, ~~as provided in s. 756.04,~~ from the prospective juror list for the county the names of not ~~less~~ fewer than 75 nor more than 150 persons to constitute ~~such~~ the prospective grand juror list. ~~They shall notify the judge in writing within the time fixed in the order that they have complied therewith. They shall keep the~~ The list shall be kept secret.

24. Section 756.10(2) of the statutes is repealed.

25. Section 756.10(3) and (4) of the statutes are renumbered 968.40(3) and (4) and amended to read:

968.40(3) (title) EXAMINATION OF ~~PANEL~~ PROSPECTIVE JURORS. At the time set for the ~~panel~~ prospective grand jurors to appear, the judge shall and the district attorney or other prosecuting officer may examine the ~~panel members~~ prospective jurors under oath or affirmation relative to their qualifications to serve as grand jurors and the judge shall excuse those who are disqualified ~~or claim lawful~~ exemptions, and may excuse others for any reason which seems proper to the judge.

(4) (title) ~~ADDITIONAL PANEL MEMBERS~~ GRAND JURORS. If after such examination ~~less~~ fewer than ~~20 panel members~~ 17 grand jurors remain, additional ~~names~~ prospective jurors shall be ~~drawn~~ selected, summoned and examined ~~as aforesaid~~. ~~The number so drawn shall be 3 times the difference between 20~~

~~and the number remaining on the panel. This method shall be continued~~ until there are at least ~~20~~ 17 qualified ~~members~~ jurors on the ~~panel~~ grand jury.

26. Section 756.10(5) of the statutes is repealed.

27. Section 756.10(6) of the statutes is renumbered 968.40(6) and amended to read:

968.40(6) TIME GRAND JURORS TO SERVE. Grand jurors shall serve for a period of ~~6 months and the judge may order them to serve for a 2nd period of 6 months but not any longer~~ 31 consecutive days unless more days are necessary to complete service in a particular proceeding. The judge may discharge the grand jury at any time.

28. Section 756.10(7) and (8) of the statutes are renumbered 968.40(7) and (8).

29. Sections 756.11 to 756.14 of the statutes are renumbered 968.41 to 968.44 and amended to read:

968.41 (title) Oath or affirmation of grand jurors. ~~The judge shall administer the following oath to grand~~ Grand jurors shall, before they begin performance of their duties: ~~You, as grand jurors for the county of . . . , do, solemnly swear (or affirm, as the case may be) that you~~ they will diligently inquire as to all matters and things which come before ~~this~~ the grand jury; that ~~you~~ they will keep all matters which come before ~~this~~ the grand jury secret; that ~~you~~ they will indict no person for envy, hatred or malice,

~~neither will you; that they will not~~ leave any person unindicted for love, fear, favor, affection or hope of reward; and that ~~you~~ they will indict truly, according to the best of ~~your~~ their understanding; ~~so help you God. The clerk of court shall deliver forthwith to each grand juror a copy of such oath.~~

968.42 (title) Foreman Presiding juror and clerk. The grand jury shall select from their number a ~~foreman~~ presiding juror and a clerk. The clerk shall preserve the minutes of the proceedings before them and all exhibits.

968.43 (title) Reporter; ~~oath~~; salary; assistant. (1) Every grand jury shall when ordered by the judge ordering such grand jury, employ one or more ~~competent~~ reporters to attend their sessions and to make and transcribe a verbatim record of all proceedings had before them.

(2) Before assuming the duties ~~prescribed in~~ under this section, each reporter shall make and file an oath or affirmation faithfully to record and transcribe all of the proceedings before the grand jury and to keep secret the matters relative to the proceedings. ~~He or she~~ Each reporter shall be paid out of the county treasury of the county in which the service is rendered such sum for compensation and expenses as shall be audited and allowed as reasonable by the court ordering the grand jury. Each reporter may employ on his or her own account ~~the assistance of a competent~~

~~typist~~ a person to transcribe the testimony and proceedings of the grand jury, but before entering upon the duties under this ~~section the typist~~ subsection, the person shall be required to make and file an oath or affirmation similar to that required of each reporter.

(3) ~~Every stenographic reporter and every typewriter operator who takes and~~ Any person who violates ~~the~~ an oath or affirmation required by ~~this section shall, upon~~ conviction thereof, sub. (2) may be imprisoned not less than one nor for not more than 5 years.

968.44 (title) ~~Oaths to witnesses~~ Witnesses. The ~~foreman~~ presiding juror of every grand jury, and the district attorney or other prosecuting officer who is before the grand jury may administer all oaths and affirmations in the manner prescribed by law to witnesses who appear before the jury for the purpose of testifying in any matter of which ~~they~~ the witnesses have cognizance. At the request of the court, the ~~foreman~~ presiding juror shall return to the court a list, under his or her hand, of all witnesses who are sworn before the grand jury, That ~~and the~~ list shall be filed by the clerk of circuit court.

30. Section 756.145 of the statutes is renumbered 968.45 and 968.45 (title), as renumbered, is amended to read:

968.45 (title) ~~Witnesses~~ Witness rights; transcripts.

31. Section 756.147 of the statutes is renumbered 968.46.

32. Section 756.15 of the statutes is renumbered 968.47.

33. Section 756.16 of the statutes is renumbered 968.48 and amended to read:

968.48 Attendance; absence; excuse; number required for grand jury session; number required to concur in indictment.

Each grand juror shall attend every session of the grand jury unless excused by the ~~foreman~~ presiding juror. The ~~foreman~~ presiding juror may excuse a grand juror from attending a grand jury session only for a reason which appears to the ~~foreman~~ presiding juror in his or her discretion as good and sufficient cause for the excuse. No business may be transacted at any session of the grand jury at which less than 14 members of the grand jury are in attendance and no indictment may be found by any grand jury unless at least 12 of their number shall concur in the indictment.

34. Section 756.17 of the statutes is renumbered 968.50 and amended to read:

968.50 Report progress and return indictments. ~~Said~~ A grand jury ~~so-selected~~ may report progress and return indictments to the court from time to time during its session and until discharged.

35. Sections 756.18 to 756.21 of the statutes are renumbered 968.50 to 968.53.

JUDICIAL COUNCIL NOTE, 1996: Statutory provisions relating to grand juries are renumbered into ch. 968, Commencement of Criminal Proceedings. Various editorial changes are made to conform to usage in revised ch. 756.

36. Section 756.22 of the statutes is repealed.

37. Section 756.23 of the statutes is repealed.

38. Section 756.24 of the statutes is repealed.

39. Section 756.25 of the statutes is repealed and recreated to read:

756.25 Juror fees and mileage. (1) Every grand and petit juror summoned shall receive an amount, not less than \$16, as fixed by the county board, for each day of attendance, and an amount equal to the mileage rate set under s. 20.916(8) for each mile traveled each day in going and returning by the most usual route. A juror may not be paid for a day when the court is not in session unless payment is ordered by the court.

(2) The county board may pay jurors by the half-day. The payment shall be for 50% of the established daily pay under sub. (1) and may not affect the payment for mileage.

(3) Notwithstanding subs. (1) and (2), if the judges in any circuit have established a system under s. 756.28 in which jurors are summoned to serve for only one day or one trial, the county board may determine the amount to be paid

jurors for the first day of attendance and the amount to be paid jurors for traveling to and from the court for the first day of attendance.

(4) When a juror has completed his or her service, the clerk of circuit court shall promptly initiate the procedure for payment of the juror's fees and mileage under s.

59.64(1)(g)1.

JUDICIAL COUNCIL NOTE, 1996: Based on prior ss. 756.24 and 756.25, this section implements ABA Standard 15. The payment procedure applies regardless of whether the juror was selected under s. 756.07 or under s. 756.08. Prior s. 756.26 is repealed as unnecessary.

40. Section 756.255 of the statutes is created to read:

756.255 Leave of absence. An employer shall grant an employe a leave of absence without loss of time in service for the period of jury service. For the purpose of determining seniority or pay advancement, the status of the employe shall be considered uninterrupted by the jury service. No employer may use absence due to jury service as a basis for discharging an employe or for any disciplinary action against the employe. An employer who discharges or disciplines an employe in violation of this section may be fined not more than \$200 and may be required to make full restitution to the aggrieved employe, including reinstatement and back pay. Except as otherwise provided in this section, restitution shall be in accordance with s. 973.20.

JUDICIAL COUNCIL NOTE, 1996: Based on prior s. 756.25(1), this section implements ABA Standard 15(c).

41. Section 756.26 of the statutes is repealed.

42. Section 756.27 of the statutes is repealed.

43. Section 756.28 of the statutes is repealed and recreated to read:

756.28 Length of juror service; periods of required availability. (1) ONE DAY OR ONE TRIAL. The judges in any circuit may establish a system in which a person summoned under s. 756.05 may not be required to serve or attend court for prospective service as a petit juror for more than one day in a specified period, unless more days are necessary to complete service in a particular case. The specified period may not be less than 2 nor more than 4 years. In circuits where judges have established such a system, a petit juror whose deliberation ends with a verdict may not be required to participate in a 2nd trial even though the juror may not have completed the first day of juror service at the time of commencement of the 2nd trial.

(2) GENERAL 4-YEAR ELIGIBILITY. In a county where a system has not been established under sub. (1), a person may be required to be available for service as a grand or petit juror only once in any 4-year period. The period for which any person may be required to be available for service may not exceed 31 consecutive days. No person may be required to

serve, or attend court for prospective service, as a juror for a total of more than 5 days unless more days are necessary to complete service in a particular case.

JUDICIAL COUNCIL NOTE, 1996: Based on prior s. 756.28, this section implements ABA Standard 5. Subsection (1) is revised to allow greater flexibility than prior statutes with respect to the length of the period during which a juror who has served for one day/one trial cannot be summoned again.

The amendment to sub. (2) is identical to a Supreme Court rulemaking petition heard October 11, 1995. The Judicial Council Note to the proposal reads as follows: Subsection (2) is revised, effective January 1, 1997, to specify that a person may only be required to be available for jury service once in any 4-year period. The maximum term of jury availability is reduced to 31 consecutive days, and the maximum number of days of actual court attendance is limited to five, unless more are necessary to complete a particular trial. This change is intended to implement the recommendations of the American Bar Association that such periods be as short as possible, consistent with the needs of justice.

44. Section 756.30 of the statutes if created to read:

756.30 Penalties. (1) Whoever wilfully misrepresents any material fact on a juror qualification form under s. 756.04(6) or whoever fails to return the completed qualification form within 10 days after receipt of the form may be required to forfeit not more than \$500.

(2) If the clerk of circuit court commits any fraud in the selection of jurors or prospective jurors, the clerk shall forfeit not more than \$500 for each offense.

(3) Any person lawfully summoned to attend as a juror who fails to attend without any sufficient excuse shall pay

a fine not exceeding \$40, which shall be imposed by the court to which the person was summoned and shall be paid into the county treasury.

JUDICIAL COUNCIL NOTE, 1966: Subsection (1) carries forward the penalty in prior s. 756.04(2)(b). Subsection (2) is based on prior s. 756.041, and carries the same penalty. Subsection (3) is based on prior s. 756.23.

45. Section 788.03 of the statutes is amended to read:

788.03 Court order to arbitrate; procedure. The party aggrieved by the alleged failure, neglect or refusal of another to perform under a written agreement for arbitration, may petition any court of record having jurisdiction of the parties or of the property for an order directing that such arbitration proceed as provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made as provided by law for the service of a summons. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. If the making of the arbitration agreement or the failure, neglect or refusal to perform the same is in issue, the court shall proceed summarily to the trial thereof. If no jury trial is demanded, the court shall hear

and determine such issue. Where such an issue is raised, either party may, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue to a jury ~~called and impaneled as provided in s. 756.096~~ summoned and selected under s. 756.06. If the jury finds that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury finds that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

JUDICIAL COUNCIL NOTE, 1996: This proposal changes "impaneled" to "selected" whenever a statute refers to choosing jurors or prospective jurors, for statutory uniformity.

46. Section 805.08(2) of the statutes is amended to read:

805.08(2)(title) NUMBER OF JURORS ~~DRAWN~~. A sufficient number of jurors shall be ~~called~~ summoned in the action so that the number applicable under s. ~~756.096(3)(b)~~ 756.06 remains after the exercise of all peremptory challenges to which the parties are entitled under sub. (3). The court may order that additional jurors be ~~impaneled~~ selected. In that case, if the number of jurors remains more than required at

the time of the final submission of the cause, the court shall determine by lot which jurors shall not initially participate in deliberations ~~and~~. The court may hold the additional jurors until the verdict is rendered or discharge them at any time.

JUDICIAL COUNCIL NOTE, 1996: This proposal changes "impaneled" to "selected" whenever a statute refers to choosing jurors or prospective jurors, for statutory uniformity. Adding the last sentence is intended to allow courts to keep additional jurors to replace any juror who might not be able to complete deliberations. Deliberations would begin anew with the additional juror in place.

47. Section 805.08(3) of the statutes is amended to read:

805.08(3) PEREMPTORY CHALLENGES. Each party shall be entitled to 3 peremptory challenges which shall be exercised alternately, the plaintiff beginning; and when any party declines to challenge in turn, the challenge shall be made by the clerk by lot. The parties to the action shall be deemed 2, all plaintiffs being one party and all defendants being the other party, except that in a case where 2 or more defendants have adverse interests, the court, if satisfied that the due protection of their interests so requires, in its discretion, may allow peremptory challenges to the defendant or defendants on each side of the adverse interests, not to exceed 3. Each side shall be entitled to one peremptory challenge in addition to those otherwise

allowed by law if additional jurors are to be ~~impaneled~~
selected under sub. (2).

48. Section 805.09(1) of the statutes is amended to read:

805.09 (1) JURY. The jury shall consist of a number of persons determined under s. ~~756.096(3)~~ 756.06(2)(b).

49. Section 805.18(2) of the statutes is amended to read:

805.18 (2) No judgment shall be reversed or set aside or new trial granted in any action or proceeding on the ground of ~~drawing~~, selection or misdirection of the jury, or the improper admission of evidence, or for error as to any matter of pleading or procedure, unless in the opinion of the court to which the application is made, after an examination of the entire action or proceeding, it shall appear that the error complained of has affected the substantial rights of the party seeking to reverse or set aside the judgment, or to secure a new trial.

50. Section 879.45(5) of the statutes is amended to read:

879.45(5) SELECTION OF JURORS. Jurors ~~and trial juries~~ shall be ~~drawn~~ selected under ~~ss. 756.04 to 756.096~~ ch. 756 and trials by jury shall be under ~~ss. 756.04 to 756.096~~ and ch. 805.

JUDICIAL COUNCIL NOTE, 1996: This proposal changes "drawn" to "selected" whenever a statute refers to choosing jurors or prospective jurors, for statutory uniformity.

51. Section 880.33(2)(a)1. of the statutes is amended to read:

880.33(2)(a)1. The proposed ward has the right to counsel whether or not present at the hearing on determination of competency. The court shall in all cases require the appointment of an attorney as guardian ad litem in accordance with s. 757.48(1) and shall in addition require representation by full legal counsel whenever the petition contains the allegations under s. 880.07(1m) or if, at least 72 hours before the hearing, the alleged incompetent requests; the guardian ad litem or any other person states that the alleged incompetent is opposed to the guardianship petition; or the court determines that the interests of justice require it. The proposed ward has the right to a trial by a jury if demanded by the proposed ward, attorney or guardian ad litem, except that if the petition contains the allegations under s. 880.07(1m) and if notice of the time set for the hearing has previously been provided to the proposed ward and his or her counsel, a jury trial is deemed waived unless demanded at least 48 hours prior to the time set for the hearing. The number of jurors shall be determined under s. ~~756.096(3)~~ 756.06(2)(b). The proposed ward, attorney or guardian ad litem shall have the right to

present and cross-examine witnesses, including the physician or psychologist reporting to the court under sub. (1). The attorney or guardian ad litem for the proposed ward shall be provided with a copy of the report of the physician or psychologist at least 96 hours in advance of the hearing. Any final decision of the court is subject to the right of appeal.

52. Section 968.49 of the statutes is created to read:

968.49 **Fine for nonattendance.** Any person lawfully summoned to attend as a grand juror who fails to attend without any sufficient excuse shall pay a fine not exceeding \$40, which shall be imposed by the court to which the person was summoned and shall be paid into the county treasury.

53. Section 971.04(1)(c) of the statutes is repealed and recreated to read:

971.04(1)(c) During voir dire of the trial jury;

JUDICIAL COUNCIL NOTE, 1996: This statute defines the proceedings at which a criminal defendant has the right to be present. The prior statute's reference to "all proceedings when the jury is being selected" was probably intended to include only those at which the jurors themselves were present, not the selection of names from lists which occurs at several stages before the defendant is charged or the trial jury picked.

54. Section 971.165(1)(c)2. and 3. of the statutes are amended to read:

971.165(1)(c)2. If the jury is discharged prior to reaching a verdict on the 2nd plea, the defendant shall not

solely on that account be entitled to a redetermination of the first plea and a different jury may be ~~drawn~~ selected to determine the 2nd plea only.

3. If an appellate court reverses a judgment as to the 2nd plea but not as to the first plea and remands for further proceedings, or if the trial court vacates the judgment as to the 2nd plea but not as to the first plea, the 2nd plea may be determined by a different jury ~~drawn~~ selected for this purpose.

JUDICIAL COUNCIL NOTE, 1996. This proposal changes "drawn" to "selected" whenever a statute refers to choosing jurors or prospective jurors.

55. Section 972.01 of the statutes is amended to read:

972.01 Jury; civil rules applicable. The summoning of jurors, the ~~impaneling~~ selection and qualifications of the jury, the challenge of jurors for cause and the duty of the court in charging the jury and giving instructions and discharging the jury when unable to agree shall be the same in criminal as in civil actions, except that s. 805.08(3) shall not apply.

JUDICIAL COUNCIL NOTE, 1996: This proposal changes "impaneled" to "selected" whenever a statute refers to choosing jurors or prospective jurors, for statutory uniformity.

56. Section 972.02(1) of the statutes is amended to read:

972.02(1) Except as otherwise provided in this chapter, criminal cases shall be tried by a jury ~~drawn~~ selected as prescribed in s. ~~756.096(3)(a) or (am), whichever is applicable, and ch. 805~~ 805.08, unless the defendant waives a jury in writing or by statement in open court or under s. 967.08(2)(b), on the record, with the approval of the court and the consent of the state.

JUDICIAL COUNCIL NOTE, 1996: This proposal changes "drawn" to "selected" whenever a statute refers to choosing jurors or prospective jurors, for statutory uniformity.

57. Section 972.03 of the statutes is amended to read:

972.03 Peremptory challenges. Each side is entitled to only 4 peremptory challenges except as otherwise provided in this section. When the crime charged is punishable by life imprisonment, the state is entitled to 6 peremptory challenges and the defendant is entitled to 6 peremptory challenges. If there is more than one defendant, the court shall divide the challenges as equally as practicable among them; and if their defenses are adverse and the court is satisfied that the protection of their rights so requires, the court may allow the defendants additional challenges. If the crime is punishable by life imprisonment, the total peremptory challenges allowed the defense shall not exceed 12 if there are only 2 defendants and 18 if there are more than 2 defendants; in other felony cases 6 challenges if there are only 2 defendants and 9 challenges if there are

more than 2. In misdemeanor cases, the state is entitled to 3 peremptory challenges and the defendant is entitled to 3 peremptory challenges, except that if there are 2 defendants, the court shall allow the defense 4 peremptory challenges, and if there are more than 2 defendants, the court shall allow the defense 6 peremptory challenges. Each side shall be allowed one additional peremptory challenge if additional jurors are to be ~~impaneled~~ selected under s. 972.04(1).

JUDICIAL COUNCIL NOTE, 1996: This proposal changes "impaneled" to "selected" whenever a statute refers to choosing jurors or prospective jurors, for statutory uniformity.

58. Section 972.04(1) of the statutes is amended to read:

972.04(1) The number of jurors ~~impaneled~~ selected shall be prescribed in s. ~~756.096(3)~~ 756.06(2)(a) or (am), whichever is applicable, unless a lesser number has been stipulated and approved under s. 972.02(2) or the court orders that additional jurors be ~~impaneled~~ selected. That number, plus the number of peremptory challenges available to all the parties, shall be called initially and maintained in the jury box by calling others to replace jurors excused for cause until all jurors have been examined. The parties shall thereupon exercise in their order, the state beginning, the peremptory challenges available to them, and

if any party declines to challenge, the challenge shall be made by the clerk by lot.

JUDICIAL COUNCIL NOTE, 1996: This proposal changes "impaneled" to "selected" whenever a statute refers to choosing jurors or prospective jurors, for statutory uniformity.

59. Section 972.10(7) of the statutes is amended to read:

972.10(7) If additional jurors have been ~~impaneled~~ selected under s. 972.04(1) and the number remains more than required at final submission of the cause, the court shall determine by lot which jurors shall not participate in deliberations and discharge them.

JUDICIAL COUNCIL NOTE, 1996: This proposal changes "impaneled" to "selected" whenever a statute refers to choosing jurors or prospective jurors, for statutory uniformity.

60. Section 975.06(1)(b) (intro.) of the statutes is amended to read:

975.06(1)(b)(intro.) The hearing shall be to a jury, unless the defendant waives a jury. The number of jurors shall be determined under s. ~~756.096(3)~~ 756.06(2)(b). The procedure shall be substantially like a jury trial in a civil action. The judge may instruct the jurors in the law. No verdict is valid or received unless agreed to and signed by five-sixths of the jurors. At the time of ordering a jury to be summoned, the court shall fix the date of hearing,

which date shall be not less than 30 days nor more than 40 days after the demand for the jury was made. The court shall submit to the jury the following form of verdict:

61. Section 978.05(4) of the statutes is amended to read:

978.05(4) GRAND JURY. When requested by a grand jury under s. ~~756.15~~ 968.47, attend the grand jury for the purpose of examining witnesses in their presence; give the grand jury advice in any legal matter; draw bills of indictment; and issue subpoenas and other processes to compel the attendance of witnesses.

62. Section 979.05(2) and (3) of the statutes are amended to read:

979.05(2) The inquest shall be conducted before a jury unless the district attorney, coroner or medical examiner requests that the inquest be conducted before the judge or court commissioner only. If the inquest is to be conducted before a jury, a sufficient number of names of ~~potential prospective~~ jurors shall be ~~drawn from the master tumbler containing the names of jurors who will be drawn for petit juries in the circuit courts of~~ selected from the prospective juror list for the county in which the inquest is to be held by the clerk of circuit court in the manner provided in s. ~~756.04(3), except that the reserve panel and time requirements do not apply~~ 756.06. The judge or court

commissioner conducting the inquest shall summon the ~~persons~~
~~drawn as~~ prospective jurors to appear before the judge or
court commissioner at the time fixed in the summons. The
summons may be served by mail, or by personal service if the
judge, court commissioner or district attorney determines
personal service to be appropriate. The summons shall be in
the form used to summon petit jurors in the circuit courts
of the county. Any person who fails to appear when summoned
as an inquest juror is subject to a forfeiture of not more
than \$40. The inquest jury shall consist of 6 jurors. If 6
jurors do not remain from the number originally summoned
after establishment of qualifications, the judge or court
commissioner conducting the inquest may require the clerk of
the circuit court to ~~draw~~ select sufficient additional
jurors' names. Those persons shall be summoned forthwith by
the sheriff of the county.

(3) The judge or court commissioner shall examine on
oath or affirmation each person who is called as a juror to
discover whether the juror is related by blood or marriage
to the decedent, any member of the decedent's family, the
district attorney, any other attorney appearing in the case,
any members of the office of the district attorney or any
other attorney appearing in the case or has expressed or
formed any opinion regarding the matters being inquired into
or is aware of or has any bias or prejudice concerning the

matters being inquired into in the inquest. If any ~~potential~~
prospective juror is found to be not indifferent or is found
to have formed an opinion which cannot be laid aside, that
juror shall be excused. The judge or court commissioner may
~~impanel~~ select one or more alternate jurors if the inquest
is likely to be protracted. This subsection does not limit
the right of the district attorney to supplement the judge's
or court commissioner's examination of any ~~potential~~
prospective jurors as to qualifications.

JUDICIAL COUNCIL NOTE, 1996: Editorial changes are made
to conform to revisions in ch. 756, including increased
penalty for nonattendance by juror.

IT IS FURTHER ORDERED that the Notes of the Judicial
Council are not adopted but shall be printed for information
purposes.

IT IS FURTHER ORDERED that notice of these amendments
of the rules of pleading, practice and procedure shall be
given by a single publication of a copy of this order in the
official state newspaper and in an official publication of
the State Bar of Wisconsin.

Dated at Madison, Wisconsin, this 16th day of January,
1997.

BY THE COURT:

Marilyn L. Graves, Clerk